



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/168559

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on October 22, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to review the merits of Petitioner's application for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. On April 16, 2015, the Petitioner filed an application for Social Security Disability Income (SSDI), stating that she had become disabled because of an amputation, diabetes, weight loss and peripheral artery disease. (Testimony of the Petitioner; DDB file)
3. On April 20, 2015, the Petitioner filed an application for disability-based Medicaid benefits, stating that she had become disabled due to a right leg-below knee amputation, an aneurysm, peripheral artery/vascular disease. (DDB file; testimony of Petitioner)

4. On June 12, 2015, the Social Security Administration (SSA) issued a decision finding the Petitioner NOT disabled, after considering her diagnoses of below the knee amputation, diabetes, peripheral vascular disease, high cholesterol, Raynaud's phenomenon and Popliteal Artery Aneurysm. (Testimony of Petitioner; DDB file)
5. On June 16, 2015, the Disability Determination Bureau (DDB) sent the Petitioner a letter advising her that her application for benefits was denied, because she did not meet the legal definition of "disabled". (Id.)
6. The Petitioner filed a request for reconsideration of the DDB decision on June 26, 2015. (DDB file; Testimony of Petitioner)
7. On an unspecified date the Petitioner also filed a request for reconsideration of the SSA decision. (Testimony of Petitioner)
8. On August 28, 2015, the SSA again denied the Petitioner's request for SSDI benefits. (DDB file; testimony of Petitioner)
9. Petitioner's condition has not changed since the August 28, 2015 denial. (Testimony of Petitioner)
10. On September 2, 2015, the DDB again denied the Petitioner's request and forwarded her file to the Division of Hearings and Appeals for review on September 8, 2015. (DDB file)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for medical assistance, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. DHFS, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Social Security Disability benefits and disability-based Medicaid benefits in April 2015. Her application for Social Security Disability benefits was based upon the same disabling conditions listed in her application for Medicaid. The SSA denied Petitioner's request for benefits within 12 months of her application for Medicaid. Petitioner's condition has not changed since she was most recently denied Social Security Disability Benefits in August 2015. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 22, 2015.

Sheboygan County Department of Human Services
Disability Determination Bureau